Employment and Social Development Canada
Emploi et Développement social Canada

Canada

Labour Program

Information on

LABOUR STANDARDS

UNJUST DISMISSAL – MEDIATION PROCESS

Part III of the *Canada Labour Code* (Labour Standards)

Mediation assistance is available to employers and complainants involved in an unjust dismissal complaint under Division XIV of the Canada Labour Code.

Every unjust dismissal complaint must meet the criteria set out in Division XIV of the Code. Publication 8 – Unjust Dismissal outlines who is entitled to protection from unjust dismissal, how to register a complaint of unjust dismissal and provides case studies based on actual unjust dismissal complaints.

This publication will answer federally regulated complainant and employer questions concerning a mediation session: what it is, why and how it works, and who is involved in the process.

1 What is mediation?

Mediation is a managed process used to help parties resolve conflict. A mediation session brings the complainant and the employer together with a neutral third party, called a mediator. The mediator provides a positive, controlled environment and helps both parties see opportunities for understanding, problem solving and resolution.

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2 What are the benefits of attending a mediation session?

Mediation guides the complainant and the employer to a resolution they create together.

Mediation saves time. The mediation session generally occurs within 8 to 12 weeks following the receipt of a complaint of unjust dismissal and lasts only 2 to 4 hours, giving parties the opportunity to achieve a timely resolution and resume normal activities.

Mediation saves money. A mediation session offers complainants and employers an informal and low-cost alternative to adjudication.

Mediation sessions are confidential.

Mediation creates a fair and reasonable resolution that meets the needs of ***both*** parties.

3 Why is mediation so successful?

The complainant and the employer control the outcome of their dispute unlike litigation or adjudication when an outside party imposes a decision.

Since a mediation session is confidential, it allows honest and open conversation between the parties. This improves communication, genuine understanding of each other's interests and encourages win-win results.

Mediation encourages future cooperation. This is particularly important in small communities.

4 Who leads the mediation session?

A Labour Program Inspector with specialized training and experience in leading mediation sessions will lead the mediation session.

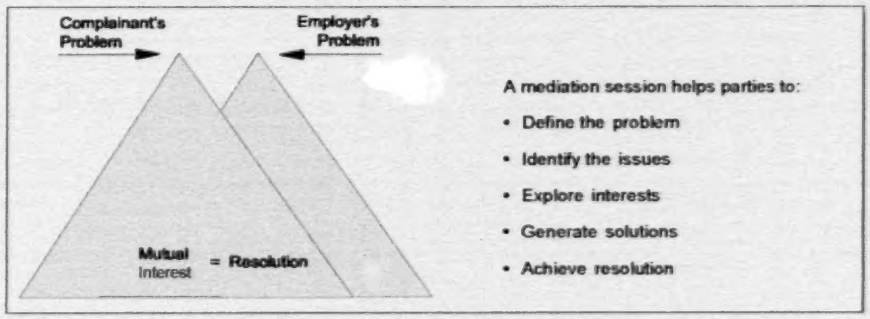
5 How does mediation work?

To achieve resolution, both parties must understand the issues in the dispute and what each party needs to be satisfied. The mediator will structure the discussions, organize information, help the parties express their concerns and point out opportunities for agreement.

The mediator helps the parties talk to each other, examine their positions, achieve understanding, explore creative solutions and create a joint resolution.

The mediator does not create the resolution. The parties determine the resolution together.

The mediator is neutral and cannot make a ruling that decides whether the dismissal was just or unjust.



6 Do I have to sign anything prior to the mediation session?

All persons who are present at the mediation session must sign a ***confidentiality agreement***. This is to ensure that everything related to the mediation session is confidential.

7 What do I bring to the mediation session?

First and foremost, bring an open mind. This is your opportunity to express your point of view and to listen to the other party's point of view. Be prepared to think about the needs and interests of the other party, as well as your own.

You may also want to bring documentation that is relevant to the dispute and supports your point of view.

8 Can I bring my friend, spouse or legal counsel to the mediation session?

Yes, you may bring someone with you for support. Since the main discussion will be between you and the other party, your guest should limit his or her own participation.

Of course, you and the other party must attend the mediation session. ***Both parties must have decision- making powers and the authority to commit to an agreement.***

9 What happens after the mediation session?

A successful mediation session results in a settlement document. The settlement document is signed by the parties and is a legal document.

The settlement document is confidential and retained by both parties to the agreement.

It is important to note that the parties to any settlement must ensure that they have met their legal obligations relative to other federal and provincial legislation. More detailed information may be obtained from local government offices.

10 Who writes the settlement document?

The complainant and the employer write the settlement document. The mediator will assist if required.

11 What if the dispute cannot be resolved at the mediation session?

SWhen resolution is not achieved, the complainant retains the right to make a written request to the Minister of Labour to appoint an Adjudicator to rule on the unjust dismissal complaint.

No documentation obtained during the mediation session is sent to the Adjudicator. The mediation session is confidential.

The Adjudicator hears the positions of both parties and rules on whether the dismissal was just or unjust. ***The Adjudicator's decision is final and binding. An Adjudicator's written decision becomes a public document.***

12 Can I refuse a mediation session?

Attending a mediation session is voluntary. The employer and the complainant are asked if they would like to participate in a mediation session. Both parties must agree to the mediation session.

If the mediation session is declined by either party, the unjust dismissal complaint is assigned to a Labour Program Inspector. The Inspector endeavours to negotiate a settlement with the parties through separate communications using mail, telephone and in-person interviews. Some people are more comfortable with this process even though it generally takes much longer to achieve a settlement.

If the Inspector is not successful in negotiating a settlement, the complainant may make a written request to the Minister of Labour to appoint an Adjudicator to rule on the complaint of unjust dismissal.

Summary

A mediation session is confidential.

A mediation session provides the complainant and employer with an opportunity to meet and resolve their dispute with the assistance of an experienced and neutral third party.

Mediation creates a fair, reasonable and timely resolution that meets the needs of both parties.

Conclusion

We have tried to cover the most common questions from complainants and employers on this topic.

This publication is provided for information only. For interpretation and application purposes, please refer to Part III of the *Canada Labour Code* (Labour Standards), the *Canada Labour Standards Regulations*, and relevant amendments.

Information about these provisions may be obtained from the Labour Program by calling toll free at 1-800-641-4049, by visiting the website at ***https://www.canada.ca/en/employment-social-development/programs/employment-standards/federal-standards.html*** *or by submitting your questions or comments through the Labour Program* ***Contact Us*** *form.*

Information on Labour Standards - UNJUST DISMISSAL Mediation Process

This publication is available for download at canada.ca/publicentre-ESDC.

It is also available upon request in multiple formats (large print, Braille, MP3, audio CD, e-text CD, DAISY, or Accessible PDF), by contacting 1 800 O-Canada (1-800-622-6232). By teletypewriter (TTY), call 1-800-926-9105.

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